

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

CAMERON MCDONALD

Plaintiff,

v.

FINALY RESOURCES, LLC

Defendant.

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CIVIL ACTION NO. 16-920

FINALY RESOURCES, LLC’S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Please take notice that FINALY RESOURCES, LLC (“Finaly”), defendant in the above-captioned action, hereby files its Notice of Removal of this civil action to the United States District Court for the Western District of Texas, Waco Division, from the 82nd Judicial District Court of Robertson County, Texas, as provided by 28 U.S.C. §§ 1332, 1441 and 1446. The grounds for removal are more particularly stated as follows:

I. PROCEDURAL HISTORY

1. On July 7, 2016, Cameron McDonald filed his Original Petition in Robertson County County, Texas naming Finaly as the lone Defendant.¹

2. Finaly was served with Plaintiff’s Original Petition on July 11, 2016.

II. TIMING

3. This Notice of Removal is filed within thirty (30) days of receipt of the first service of the Original Petition on Finaly, and is therefore timely filed under 28 U.S.C. §1446(b).

¹ Plaintiff’s Original Petition.

III. DIVERSITY

4. Plaintiff's Original Petition establishes that the United States District Court for the Western District of Texas, Waco Division has jurisdiction by reason of the diversity of citizenship of the parties.

5. According to his Original Petition, Plaintiff resides in Brazos County, Texas.² For purposes of removal, it must therefore be presumed that Plaintiff is now, and was at the time this action was commenced, a citizen of Texas.

6. Finaly is a foreign limited liability company.³ Finaly is a California limited liability company. Its members are Roy Finaly and Tom Tamir, both of whom are citizens of California. The citizenship of a limited liability company "is determined by the citizenship of all of its members." *See Bank of America, N.A. v. Fulcrum Enterprises, LLC*, No. 14-20532, 2016 WL 1084225, at *1 (5th Cir. Mar. 18, 2016) (quoting *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008)).

7. Therefore, because Finaly's members are citizens of California and Plaintiff is a citizen of Texas, there is complete diversity of citizenship.

IV. AMOUNT IN CONTROVERSY

8. Plaintiff represents in his Original Petition that he seeks "monetary relief over \$200,000.00 but not more than \$1,000,000.00."⁴

9. Accordingly, it is "facially apparent" that Plaintiff's claims exceed \$75,000.00, which is all that is required to satisfy the amount-in-controversy requirement.⁵

² *Id.* at P1.

³ *Id.*

⁴ *Id.*

⁵ *See Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

10. Therefore, it is clear that the amount in controversy exceeds the minimal jurisdictional requirements of the Court as set forth in 28 U.S.C. §1332(a).

V. ORIGINAL JURISDICTION

11. Because there exists diversity of citizenship between Plaintiff and Finaly, and the amount in controversy exceeds the minimal jurisdictional requirements, this Court has original jurisdiction of this case, pursuant to 28 U.S.C. §1332. This case may be removed to this Court pursuant to 28 U.S.C. §1441.

VI. NOTICE TO STATE COURT

12. Finaly has given notice of this removal to the 82nd District Court of Robertson County, Texas.

VII. ATTACHMENTS

13. All pleadings, process, and other filings in the state court action are attached to this notice as required by 28 U.S.C. §1446(a).

VIII. CONSENT

14. Finaly is the only Defendant and consents to removal. As the only Defendant no other consent is required.

IX. CONCLUSION

15. For the foregoing reasons, Finaly Resources, LLC requests that this Court place this case on the docket of the United States District Court for the Western District of Texas, Waco Division. Finaly Resources, LLC further requests a full and fair opportunity to brief, respond, and argue against any Motion for Remand filed by Plaintiff.

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN &
DICKER, LLP.

/s/Kent M. Adams

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**ATTORNEYS FOR FINALY RESOURCES,
LLC**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served on all counsel in accordance with the Federal Rules of Civil Procedure via certified mail, return receipt requested and/or via facsimile on the 1st day of August, 2016:

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